



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2014-0317; FRL-9915-38-Region 9]**

**Approval and Promulgation of State Implementation Plans; Hawaii; Infrastructure Requirements for the 2008 8-Hour Ozone and the 2010 Nitrogen Dioxide National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) revision submitted by the State of Hawaii on April 4, 2014, pursuant to the requirements of the Clean Air Act (CAA or the Act) for the 8-Hour Ozone and the 2010 Nitrogen Dioxide national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

**DATES:** This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action, identified by Docket ID Number EPA-R09-OAR-2014-0317. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San

Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Tom Kelly, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3856, [kelly.thomasp@epa.gov](mailto:kelly.thomasp@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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## **I. Background**

On May 19, 2014 (79 FR 28659), EPA proposed to approve elements of the *Hawaii State Implementation Plan Revision for 8-Hour Ozone and the 2010 Nitrogen Dioxide National Ambient Air Quality Standards, Clean Air Act §110(a)(1) and (2)* (“Hawaii Ozone and Nitrogen Dioxide Infrastructure SIP”), submitted by the State of Hawaii on April 4, 2014. In particular, we proposed to approve Hawaii Administrative Rules (HAR) section 11-60.1-31, as well as Hawaii Revised Statutes (HRS) sections 342B-4 and 342B-5 into the Hawaii SIP and to remove HRS sections 342-14, 342-18 and 342-19 from the SIP. We also proposed to approve the Hawaii Ozone and Nitrogen Dioxide Infrastructure SIP with respect to the following CAA requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.

- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (minor NSR program).
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Public notification (sub-element 2).
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data..
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

We did not propose to take action on the Hawaii Ozone and Nitrogen Dioxide Infrastructure SIP with respect to the following sub-elements: 110(a)(2)(C) sub-element 3 (preconstruction PSD permitting of major sources); 110(a)(2)(D) all sub-elements; and 110(a)(2)(J) sub-elements 1 (consultation with identified officials on certain air agency actions) and 3 (PSD).

The rationale supporting EPA's action, including the scope of infrastructure SIPs in general, is explained in the proposed rule and the associated technical support document (TSD) and will not be restated here. The TSD is available online at <http://www.regulations.gov>, Docket ID number EPA–R09–OAR– 2014–0317. We did not received any public comments on our proposal.

## **II. Final Action**

EPA is approving HAR section 11-60.1-31 and HRS sections 342B-4 and 342B-5 into the Hawaii SIP and removing HRS sections 342-14, 342-18 and 342-19 from the SIP.

EPA is also approving the Hawaii Ozone and Nitrogen Dioxide Infrastructure SIP with respect to the following requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (minor NSR program).
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Public notification (sub-element 2).
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

### **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves certain state

laws as meeting federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days from date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 5, 2014.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Therefore, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart M — Hawaii**

2. In §52.620:

a. In the table in paragraph (c), add an entry for “11-60.1-31” after the entry for “11-60.1-20.”

b. In the table in paragraph (e), revise the table section heading entitled “State of Hawaii Air Pollution Control Implementation Plans for Ozone, PM<sub>2.5</sub>, and Lead.”

c. In the table in paragraph (e), add an entry for “Hawaii State Implementation Plan Revision, National Ambient Air Quality Standards for 2008 Ozone and 2010 Nitrogen Dioxide, Clean Air Act Section 110(a)(1) & (2), excluding attachment 3, and appendices A, B, and C” after the entry for “Hawaii State Implementation Plan Revision for 2008 Lead National Ambient Air Quality Standard, Clean Air Act Section 110(a)(1) & (2), excluding attachment 6, and appendices A, B, C, F.”

d. In the table in paragraph (e), remove the table section heading entitled “Hawaii Revised Statutes, Chapter 342, Hawaii Statute on Environmental Quality.”

e. In the table in paragraph (e), add entries for “342B-4” and “342B-5” after the entry for “342B-3.”

The additions and revisions read as follows:

**§52.620 Identification of plan.**



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(c) \* \* \*

### EPA-APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Department of Health, Title 11, Chapter 60.1, Air Pollution Control, Hawaii Administrative Rules</b>				
*	*	*	*	*
11-60.1-31	Applicability	11/26/93	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u>	Newly added to the Hawaii SIP. Submitted on April 4, 2014.
*	*	*	*	*

\* \* \* \* \*

(e) \* \* \*

**EPA APPROVED HAWAII NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES**

<b>Name of SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Explanation</b>
*	*	*	*	*
<b>State of Hawaii Air Pollution Control Implementation Plans for Nitrogen Dioxide, Ozone, PM<sub>2.5</sub>, and Lead</b>				
*	*	*	*	*
Hawaii State Implementation Plan Revision, National Ambient Air Quality Standards for 2008 Ozone and 2010 Nitrogen Dioxide, Clean Air Act Section 110(a)(1) & (2), excluding attachment 3, and appendices A, B, and C.	Statewide	4/4/14	<b><u>[Insert the date of publication in the Federal Register]</u></b> <b><u>[Insert Federal Register citation]</u></b>	Approved SIP revision excludes attachment 3 (“Summary of Public Participation Proceedings”), appendix A (“Hawaii Revised Statutes, Title 19, Health, Chapter 342B, Air Pollution Control Sections 4 and 5”); appendix B (“Hawaii Administrative Rules, Title 11, Department of Health, Chapter 11-60.1, Air Pollution Control, Section 31;”), appendix C (“Approvals & Public Participation Proceedings for HAR §11-60.1-31: November 26, 1993 version”) . The statutory provisions in appendix A are listed separately in the table under paragraph (e). The regulations in appendix B are listed separately in the table under paragraph (c). This action addresses

				the following CAA elements or portions thereof for the 2008 Ozone and 2010 Nitrogen Dioxide NAAQS: 110(a)(2)(A), (B), (C), (E), (F), (G), (H), (J), (K), (L), and (M).	
*	*	*	*	*	*
Hawaii Revised Statutes, Division 1 (Government), Title 19 (Health), Chapter 342B (Air Pollution Control)					
*	*	*	*	*	*
342B-4	Other powers of department and director not affected.	4/4/14	[Insert the date of publication in the Federal Register] [Insert Federal Register citation]	Most recently amended in Laws 1992, Act 240, pt of § 1. Included in appendix A to the Hawaii State Implementation Plan Revision, National Ambient Air Quality Standards for 2008 Ozone and 2010 Nitrogen Dioxide, Clean Air Act Section 110(a)(1) & (2).	
342B-5	Effect of laws, ordinances, and rules.	4/4/14	[Insert the date of publication in the Federal Register] [Insert Federal Register citation]	Most recently amended in Laws 1992, Act 240, pt of § 1. Included in appendix A to the Hawaii State Implementation Plan Revision, National Ambient Air Quality Standards for 2008 Ozone and 2010 Nitrogen Dioxide, Clean Air Act Section 110(a)(1) & (2).	
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[FR Doc. 2014-19688 Filed 08/20/2014 at 8:45 am; Publication Date: 08/21/2014]